



## PUBLIC SECTOR NEWSLETTER - VICTORIA

We would firstly like to thank all of those in the public sector who have been working so hard over the past few weeks to contain the current COVID-19 outbreak in Victoria and keep us safe, it is appreciated.

In this edition, we highlight one of the more interesting decisions of recent times, *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560. In that case, the Federal Court of Australia found the Federal Minister for the Environment had a duty of care to protect young people from climate change. Hailed as a world first, should the decision stand it could have significant and wide reaching implications on the operations of government.

We would also like to draw your attention to a number of government inquiries open for submissions, including on criminal justice, the use of cannabis and sex discrimination in parliamentary workplaces.

We hope you enjoy this edition of our Public Sector Newsletter.

### IN THE MEDIA

**Linda Reynolds apologises after NDIS sends woman's private details to abusive ex-partner**

The privacy breach is the latest controversy to embroil the scheme and came as the minister defended a leaked communications plan related to independent assessments. (04 June 2021) <https://www.theguardian.com/australia-news/2021/jun/04/linda-reynolds-apologises-after-ndis-sends-womans-private-details-to-abusive-ex-partner>

**Release of the Foster Report**

The Government has released the consultation report provided by Stephanie Foster PSM into the processes and procedures relating to serious incidents in the parliamentary workplace. This report has some significant findings and recommendations to improve how serious incidents are prevented and dealt. (04 June 2021) <https://www.financeminister.gov.au/media-release/2021/06/04/release-foster-report>

**Legal profession leading change on domestic and family violence**

President of the Law Council, said the Law Council convened the roundtable following the findings of several recent inquiries, that called for the legal system to be better equipped to respond to family violence and protect vulnerable individuals. Participants agreed that problems caused by the differing definitions of domestic and family violence between jurisdictions should be further considered. (30 May 2021) <https://www.lawcouncil.asn.au/media/media-releases/legal-profession-leading-change-on-domestic-and-family-violence>

**Australian court finds government has duty to protect young people from climate crisis**

The Federal Court of Australia has found the Environment Minister, Sussan Ley, has a duty of care to protect young people from the climate crisis in a judgment hailed by lawyers and teenagers who brought the case as a world first. (27 May 2021) [https://www.theguardian.com/australia-news/2021/may/27/australian-court-finds-government-has-duty-to-protect-young-people-from-climate-crisis?fbclid=IwAR3ypf4UaqCRCdV\\_A8hzO-NNnGX4CT2gwwCtZQ4iSGQ1dOMceP4yvVwNOyU](https://www.theguardian.com/australia-news/2021/may/27/australian-court-finds-government-has-duty-to-protect-young-people-from-climate-crisis?fbclid=IwAR3ypf4UaqCRCdV_A8hzO-NNnGX4CT2gwwCtZQ4iSGQ1dOMceP4yvVwNOyU)

**Australians deserve tech that protects their rights**

A new report by the AHRC calls for far-reaching changes to ensure governments, companies and others safeguard human rights in the design, development and use of new technologies like artificial intelligence (AI). The Human Rights and Technology final report, makes 38 recommendations to ensure human rights are upheld in Australia's laws, policies, funding and education on AI. (27 May 2021) <https://humanrights.gov.au/about/news/media-releases/australians-deserve-tech-protects-their-rights>

**IBAC charges three Victoria Police officers with negligently causing serious injury**

Victoria's independent police oversight body, the Independent Broad-based Anti-corruption Commission (IBAC), has charged three Victoria Police officers with

negligently causing serious injury, in an incident that occurred in Warrnambool in November 2017. (03 June 2021) <https://www.ibac.vic.gov.au/media-releases/article/ibac-charges-three-victoria-police-officers-with-negligently-causing-serious-injury>

#### **Update regarding Operation Esperance public hearings**

IBAC's Operation Esperance public hearings have been adjourned until further notice. IBAC Commissioner The Honourable Robert Redlich AM, QC said he has decided to defer the public hearings until further notice as a precautionary measure in consideration of public health. (27 May 2021) <https://www.ibac.vic.gov.au/media-releases/article/update-regarding-operation-esperance-public-hearings>

#### **Legal Aid Victoria: New advice and referral service for clients affected by management of police informants**

Legal Aid have launched a new service to provide legal advice and referrals for people who may have grounds for appeal following the findings of the Royal Commission into the Management of Police Informants (RCMPI). The service will triage requests and conduct discovery to assess whether people have grounds to launch an appeal or to seek other remedies, including compensation. (24 May 2021) <https://www.legalaid.vic.gov.au/about-us/news/new-advice-and-referral-service-for-clients-affected-by-management-of-police-informants>

### **IN PRACTICE AND COURTS**

#### **Commonwealth Parliamentary Review now open for submissions and interviews: Sex Discrimination**

The AHRC is inviting contributions for its Independent Review into Commonwealth Parliamentary Workplaces, accepting written contributions from groups covered by the Review's Terms of Reference.

#### **ALRC Judicial Impartiality Consultation Paper 2021**

The Inquiry would look at judges in the High Court, Federal Court, Family Court and Federal Circuit Court. Submissions are open until 30 June. The ALRC was expected to deliver its report to the Attorney-General by 30 September.

#### **Supreme Court**

#### **George Pell media contempt proceeding - judgment**

03 June 2021 - The judgment on penalty in the George Pell media contempt proceeding was handed down on 4 June 2021.

#### **Coronavirus information**

31 May 2021- The Supreme Court of Victoria is following State and Commonwealth government advice regarding coronavirus (COVID-19).

#### **Consultations**

#### **Inquiry into Victoria's Criminal Justice System - Have your say**

The Legislative Council Legal and Social Issues Committee is accepting submissions to its Inquiry into

Victoria's criminal justice system. Submissions close on 1 September 2021.

#### **Inquiry into the Use of Cannabis in Victoria - Have your say**

The reporting date for this inquiry has been extended to 05 August 2021.

#### **Inquiry into Management of Child Sex Offender Information - Have your say**

The reporting date for this inquiry has been extended to 30 August 2021.

### **CASES**

#### **Australian Conservation Foundation Incorporated v Minister for the Environment [2021] FCA 550**

ADMINISTRATIVE LAW – statutory construction – application for judicial review – where proposed action for construction of and operation of infrastructure to harvest and supply water to a coal mine by a different but related company – where proposed action intended to provide an alternative source of water from that approved in the initial proposal for the construction and operation of the coal mine – where the delegate of the Minister for the Environment decided under s 75(1) of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) that ss 24D and 24E (the water trigger controlling provisions) were not controlling provisions for the proposed action (the controlled action decision) – whether the delegate erred in construing the phrase involves large coal mining development in ss 24D and 24E and definition of "large coal mining development" in s 528 as encompassing only an activity which forms part of the process of extracting coal from a mine – where so-called definition enacts substantive criteria – whether delegate's construction supported by the penal nature of the controlling provisions – where contrary to the delegate's construction an action will involve a large coal mining development if the action is so closely associated with the mining of coal as to be integral to it – application for judicial review granted – controlled action decision to be remitted to the Minister for determination according to law.

The Action was to construct and operate the NGWS Project. Adani Infrastructure explained in its referral that the project: Separate applications for State and local government approvals.

#### **Impiombato v BHP Group Limited (No 2) [2020] FCA 1720**

REPRESENTATIVE PROCEEDINGS – shareholder class action – claims brought on behalf of non-resident shareholders – dual listed company structure – whether provisions of Pt IVA of the Federal Court of Australia Act 1976 (Cth) capable of application to group members not resident in Australia – procedure under Pt IVA – consideration of the meaning of "claim" under s 33C – question of jurisdiction better defined as whether Pt IVA permits an applicant to define group membership as including claims of non-residents – statutory

presumption against extraterritorial operation of legislation – s 33C directed to when a particular form of proceeding can be commenced in an Australian court – presumption has no work to do – consideration of class action regimes in different common law jurisdictions and the issue of non-resident group members – consideration of s 33KA of the Supreme Court Act 1986 (Vic) – whether the Court should exercise its discretion to exclude non-resident group members from the proceeding – order could be fashioned if and when appropriate – strike out application – whether the claims brought on behalf of the shareholders in the United Kingdom company were viable

EQUITY – Pt IVA supplements powers Court always had and has as a court of equity to hear and determine in a single proceeding the multiple claims against a respondent – consideration of the powers the Court of Chancery had in relation to the conduct of a representative proceeding – concept of jurisdiction not based on mere presence and service, but upon a sufficient connexion being shown between the dispute and forum – purpose of Pt IVA not to narrow regimes that existed in equity's exclusive or auxiliary jurisdiction – curious result if one could be a group member in a Chancery rule representative proceeding but not under Pt IVA procedures

PRIVATE INTERNATIONAL LAW – authority of the Court to decide personal actions of non-residents – consideration of the jurisdictional “anchor” – Mobil Oil Australia Pty Ltd v Victoria [2002] HCA 27; (2002) 211 CLR 1 – territorial nexus the capacity to exercise power over a respondent

HIGH COURT AND FEDERAL COURT – federal jurisdiction – whether Pt IVA confers jurisdiction on the Court or establishes powers and procedures by which the Court can exercise jurisdiction

Constitution ss 71, 77 Acts Interpretation Act 1901 (Cth) ss 9, 21(1)(b)

#### [Talevska v Ensign Services \(Aust\) Pty Ltd \[2021\] VSC 309](#)

ADMINISTRATIVE LAW – Judicial Review – Opinion of Medical Panel – Panel's opinion that symptomatic lumbar spondylosis and chronic pain syndrome unrelated to the plaintiff's employment – Whether the Panel made a jurisdictional error as a result of failing to have regard to relevant and important material – Whether open to the Panel to come to certain conclusions – Whether Panel failed to consider relevant matters – Whether Panel gave adequate reasons for its decision – Chang v Neill (2019) 62 VR 174 - Application allowed.

#### [Victorian WorkCover Authority v Baumgartner & Anor \[2021\] VSC 300](#)

ADMINISTRATIVE LAW – Judicial Review – Medical Panel – Referral of question to medical panel – Workplace Injury Rehabilitation and Compensation Act 2013 (Vic),

Part 6 – Abuse of process – Relevance of medical question to issues in dispute between the parties – Function of a Medical Panel – Error by trial Judge in refusing to refer certain questions – Certiorari – Rogers v The Queen [1994] HCA 42; (1994) 181 CLR 251 – Masters v McCubbery and Ors [1996] VR 365 – Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480 – Greeves v HIH Winterthur Workers' Compensation (Vic) Ltd [2000] VSCA 68; [2000] 1 VR 344 – Isuzu General Motors Australia Ltd v Jordon [2000] VSCA 63; (2000) 2 VR 212 – Kamener & Ors v Griffin & Ors [2005] VSC 202 – Stewart v GUD Manufacturing Co Pty Ltd (unreported, County Court of Victoria, Rendit J, 4 May 1999).

#### [Kerig v Victoria University \(Human Rights\) \[2021\] VCAT 532](#)

Health Records Act 2001 (Vic) (HR Act) – alleged breach of s 45(1) and relevant Health Privacy Principles. Work computer allocated to Applicant who stored health information. Previous decision on same facts dismissing alleged breach of Privacy and Data Protection Act 2014; Respondent's application for summary dismissal on basis of Anshun principle proven; Respondent investigated work computer; unauthorized configuration of computer by Applicant and inappropriate material leading to dismissal; No breach of HR Act proven; complaint dismissed.

### LEGISLATION

#### [Gender Equality Act 2020](#)

Act as made Act number 5/2020. Includes workplace gender equality

(2) Part 9 of this Act comes into operation on 1 July 2021.

(3) If a provision of this Act other than Part 9 does not come into operation before 31 March 2021, it comes into operation on that day

## KEY CONTACTS

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Your contacts responsible for navigating our firm, connecting you with appropriate expertise and achieving maximum efficiency and your Newsletter editors.



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### Scope

We are pleased to be able to work collaboratively with the Victorian Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to 'brainstorm' or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- a dedicated library resource to assist Victorian Government departments and agencies research relevant case law, statutes, regulations and articles.

Please note that the Help Desk Services are only available in respect of any matter which is currently unallocated i.e. to this firm or any other firm.

### Key Contact and Help Desk Process

You can access the Help Desk by:

- (a) Calling 03 8080 3604; or
- (b) Emailing [legalhelpdesk@tglaw.com.au](mailto:legalhelpdesk@tglaw.com.au)

Once relevant details are received from you (whether that be by email or over the phone) it will be directed to the appropriate Thomson Geer Partner, Special Counsel or Senior Associate. The Help Desk number and email address will be monitored during normal business hours (9.00 am to 5.00 pm (EST), Monday to Friday).

Thomson Geer will use its best endeavours to provide the Help Desk Services within one business day of the query being logged.

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